

REMARKS

Claims 1-20 are pending in the present application. In the Office Action mailed February 6, 2006, the Examiner rejected Claims 1-2, 4, 6, 9, 11-14, 16, and 18-20 under 35 U.S.C. §102(b) as anticipated by Kennedy, U.S. Pat. No. 5,203,345; Claims 1-3 and 20 as obvious over Wallace, U.S. Pat. No. 4,865,044; Claim 10 as obvious over Kennedy; Claim 8 as obvious over Wallace in view of Stafford, U.S. Patent No. 5,482,008; Claims 7, 14-15 and 17 as obvious over Kennedy in view of Han (U.S. Pat. No. 6,835,553); Claims 6-7, 15 and 17 as obvious over Wallace in view of Han; and Claim 5 as obvious over Kennedy in view of Hamel (U.S. Pat. No. 6,622,567). Each rejection is discussed below.

I. Rejection of Claims 1-2, 4, 6, 9, 11-14, 16, and 18-20 Under 35 U.S.C. §102(b)

Claims 1-2, 4, 6, 9, 11-14, 16, and 18-20 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,203,345 (hereinafter, "the Kennedy patent"). In particular, the Examiner states, "Kennedy discloses in Fig. 1 a remote telemetry/system method comprising an implantable temperature sensing device (transmitter) implanted in vagina of a (dairy) cow (col. 3, line 27) to determine an estrus temperature of the cow, a signal receiver / receiving antenna and a digital computer, inherently, acting as a processor and a digital access device, each temperature device comprises an identification signal to indicate the cow identity and its temperature (col. 3, lines 8-10). This would imply that there is a means/device in the implanted transmitter or that used for identification or location. Also, the fact that Kennedy discloses the identification signal / code number would suggest that there is an identification device bearing / storing the identification code." Office Action, page 2.

The Applicants respectfully disagree. The claims have been amended to specify that the animal identification device is fixable to the animal, receives messages from the processor and then displays a signal to facilitate identification of the animal within a herd. Support for this amendment is found, among other places in the specification, at page 12, lines 24-25; page 18, lines 24-30; and page 19, lines 17-21. Wallace does not teach this element.

The Examiner's attention is respectfully directed to the accompanying declaration of Dr. Roger Meads. As explained by Dr. Meads, the presently claimed system allows for two-way communication:

In the claimed system, the temperature of the cow is transmitted to the processor. The processor analyzes the information and then transmits a message to an animal identification device located on the animal. The animal identification device then displays a signal that facilitates identification of the animal.

Meads Decl. ¶4. In contrast, the Kennedy system only allows for one-way communication from the cow to a processor. Meads. Decl. ¶5. The Kennedy patent does not teach the use of a device fixable to the animal that receives messages from a processor and then displays a signal on the animal. *Id.*

Applicant respectfully submits that the Examiner's arguments with regards to inherency are misplaced. It appears that the Examiner is arguing that computer comprises an animal identification device. In the presently claimed system, the animal identification device is distinct from the computer, is fixable to the animal, receives messages from the processor, and displays a signal. There is no such function inherent in the computer of Kennedy. Applicants respectfully submit that the Examiner is applying a flawed inherency analysis. As the Federal Circuit has held in *Continental Can*:

To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.

Continental Can Company USA, Inc., v. Monsanto Co., 948 F.2d 1264, 1268 (Fed. Cir. 1991) (emphasis added) (holding no anticipation due to inherency). Thus, argued gaps in a reference must be filled by evidence that clearly shows the descriptive matter is necessarily present. This is a far more stringent standard than the standard urged by the Examiner. Indeed, inherency "may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *Id.* at 1269 (quoting *In re Oelrich*, 666 F.2d 578, 581 (CCPA 1981)).

In the present case, the Examiner has provided no evidence that the claimed elements are necessarily present in the Kennedy patent. There is no anticipation by inherency.

Because the Kennedy patent does not teach the use of a device located on the animal that receives messages from a processor and then displays a signal on the animal as required by the claims, the claims are not anticipated by Kennedy. As such, claims 1-2, 4, 6, 9, 11-14, 16 and 18-20 are free of the prior art.

II. Rejections Under 35 U.S.C. §103(a)

a. Claims 1-3 and 20 are not obvious over Wallace, U.S. Pat. No. 4,865,044

The Examiner has rejected claims 1-3 and 20 as obvious over Wallace. Applicants respectfully disagree. Wallace suffers from the same deficiency as Kennedy. As described in the Meads Declaration, the Wallace system only allows for one-way communication from the cow to a processor. Meads. Decl. ¶5. Because the Wallace patent does not teach the use of an identification device fixable the animal that receives messages from a processor and then displays a signal on the animal to facilitate identification of the animal within a herd, as required by the claims, the claims are not obvious over Wallace.

A *prima facie* case of obvious requires that the cited references teach or suggest each element of the claim. There is no *prima facie* of obviousness for the instant claims because Wallace does not teach the element of an identification device fixable the animal that receives messages from a processor and then displays a signal on the animal to facilitate identification of the animal within a herd. As such, this ground of rejection should be removed.

b. Claim 10 is not obvious over Kennedy

The Examiner has rejected claim 10 as obvious over Kennedy. A *prima facie* case of obvious requires that the cited references teach or suggest each element of the claim. There is no *prima facie* of obviousness for the instant claims because, as described in the Meads Declaration, Kennedy does not teach or suggest the element of an

identification device fixable the animal that receives messages from a processor and then displays a signal on the animal to facilitate identification of the animal within a herd. As such, this ground of rejection should be removed.

c. Claim 8 is not obvious over Wallace in view of Stafford

The Examiner has rejected Claim 8 as obvious over Wallace in view of Stafford. There is no *prima facie* of obviousness for the instant claims because, as described in the Meads Declaration, neither Wallace nor Stafford teach or suggest the element of an identification device fixable the animal that receives messages from a processor and then displays a signal on the animal to facilitate identification of the animal within a herd. As such, this ground of rejection should be removed.

d. Claims 7, 14-15 and 17 are not obvious over Kennedy in view of Han

The Examiner has rejected Claims 7, 14-15 and 17 as obvious over Kennedy in view of Han. There is no *prima facie* of obviousness for the instant claims because, as described in the Meads Declaration, neither Kennedy nor Han teach or suggest the element of an identification device fixable the animal that receives messages from a processor and then displays a signal on the animal to facilitate identification of the animal within a herd. As such, this ground of rejection should be removed.

e. Claims 6-7, 15 and 17 are not obvious over Wallace in view of Han

The Examiner has rejected Claims 6-7, 15 and 17 as obvious over Wallace in view of Han. There is no *prima facie* of obviousness for the instant claims because, as described in the Meads Declaration, neither Wallace nor Han teach or suggest the element of an identification device fixable the animal that receives messages from a processor and then displays a signal on the animal to facilitate identification of the animal within a herd. As such, this ground of rejection should be removed.

f. Claim 5 is not obvious over Kennedy in view of Hamel

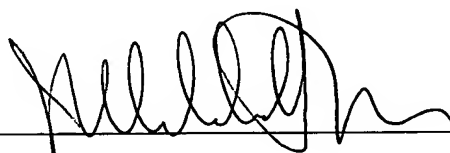
The Examiner has rejected Claim 5 as obvious over Kennedy in view of Hamel. There is no *prima facie* of obviousness for the instant claims because, as described in the Meads Declaration, neither Kennedy nor Hamel teach or suggest the element of an identification device fixable the animal that receives messages from a processor and then

displays a signal on the animal to facilitate identification of the animal within a herd. As such, this ground of rejection should be removed.

III. CONCLUSION

All grounds of rejection of the Office Action of August 1, 2006, have been addressed and reconsideration of the application is respectfully requested. It is respectfully submitted that Applicant's claims should be passed into allowance. Should the Examiner believe that a telephone interview would aid in the prosecution of this application Applicant encourages the Examiner to call the undersigned collect at (608) 218-6900.

Dated: November 1, 2006

A handwritten signature in black ink, appearing to read 'J. Mitchell Jones', written over a horizontal line.

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